



# TAX ALERT

***Foreign E-service  
providers brought  
within Service Tax net***



### **Introduction:**

Globalization and rapid improvement in technology has increased the provision of services using telecommunication network or internet. To attract revenue from such services, government has brought about a massive change in the taxability of online information and database access and retrieval (OIDAR) services which will be effective from 1<sup>st</sup> December, 2016. Foreign entities providing OIDAR services to Indian consumers for personal purposes have been made taxable.<sup>i</sup>

### **Scope of OIDAR services widened:**

Definition has been substituted to include all services which are automatically delivered over the internet or an electronic network, where there is minimal or no human intervention. Hence, these services are now brought within the ambit of taxable services in addition to providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network. Moreover, following services have been specifically added by way of an inclusion clause-

- Advertising on the internet like google search Ads, youtube Ads
- Providing cloud services. There are lots of cloud based applications used by us over different platforms.
- Provision of e-books, movie, music, software and other intangibles via telecommunication networks or internet.
- Online supplies of digital content. For example- online course consisting of pre-recorded videos.
- Digital data storage and
- Online gaming.

As long as above services are consumed in India, it would attract service tax. Amendments have also been made as to who shall be responsible for discharge of service tax on these services. The same are explained in brief hereunder.

The OIDAR services shall now be deemed to be provided at the location of the service receiver i.e. in India. Relevant amendments have been made in Place of Provision of Service Rules, 2012.<sup>ii</sup> The OIDAR services by foreign entities are made taxable even when provided to non assessee online recipient<sup>iii</sup> i.e. a Government, a local authority, a Governmental authority or an individual who is not having service tax registration, for personal purposes.<sup>iv</sup> Thus, the OIDAR services are now taxable in India when provided by foreign entities to any person located in India. Person receiving OIDAR services shall be deemed to be located in the taxable territory if any two of the following non contradictory conditions are satisfied, namely :-

1. The location of address presented by the service recipient via internet is in taxable territory
2. The credit card or debit card or store value card or charge card or smart card or any other card by which the service recipient settles payment has been issued in the taxable territory
3. The service recipient's billing address is in the taxable territory
4. The internet protocol address of the device used by the service recipient is in the taxable territory
5. The service recipient's bank in which the account used for payment is maintained is in the taxable territory
6. The country code of the subscriber identity module (SIM) card used by the service recipient is of taxable territory
7. The location of the service recipient's fixed land line through which the service is received by the person, is in taxable territory.



### **Liability to pay tax:**

The service receiver is liable to pay tax under reverse charge mechanism in case of receipt of services from foreign entities. However, when OIDAR services are received by non assessee online recipient from foreign entities, service provider abroad is liable to pay tax under forward charge. OIDAR services received by business entities in India continue to be taxed under reverse charge mechanism.

Service tax may be discharged by the representative of service provider in India. If there is no representative for any purpose, foreign service provider may appoint a person in India for the purpose of paying service tax and such person shall be liable for paying service tax.

Intermediary located abroad including an electronic platform, a broker, an agent or any other person, by whatever name called, who arranges or facilitates provision of such service for non-assessee online recipient, but does not provides the main service on his account shall be liable to pay service tax except when the intermediary satisfies all the conditions mentioned in the service tax rules.<sup>v</sup>

### **Registration and Invoice:**

Service provider abroad may make an application for registration within a period of thirty days from the date on which the service tax under section 66B of the Act is levied or when the person has commenced supply of taxable services in India. The registration shall be deemed to be granted from the date of receipt of the application by department.

The invoice, bill, or challan for OIDAR services shall include any document containing name and address of the service receiver and other information in such documents as required under service tax rules,1994.

### **Conclusion:**

OIDAR services have been enlarged to include various electronic services. Foreign service providers, providing OIDAR services to non-assessee online recipient are now liable to pay tax in India. This is a step to increase revenue for Government. At the same time the services are going to be expensive for the final consumers. The foreign entities providing online services should check their status for service tax liability in India and various statutory compliance.

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<sup>i</sup> Amendment has been made via following notifications:

Notification No. 46/2016-service tax  
Notification No. 47/2016- service tax  
Notification No. 48/2016-service tax  
Notification No. 49/2016-service tax  
Circular No. 202/12/2016-service tax

<sup>ii</sup> Amended via notification no. 46/2016, OIDAR services brought under Rule 3 of POPS Rules, 2012

<sup>iii</sup> Defined in service tax rules, 1994 via notification no. 48/2016. It means government, local authority, governmental authority or an individual for personal purposes.

<sup>iv</sup> Amended entry 34(c) of mega exemption via notification no. 47/2016

<sup>v</sup> Conditions inserted in service tax rules, 1994 via notification no. 48/2016